TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1922

No. [redacted]

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

RAYMOND H. BOWMAN.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED APRIL 19, 1921

(28241)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 884.

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vs.

RAYMOND H. BOWMAN.

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Second Circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from 5 to 43, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of United States of America, plaintiff in error, against Raymond H. Bowman, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this 9th day of April, in the year of our Lord one thousand nine hundred and twenty-one, and of the independence of the United States the one hundred and forty-fifth.

[SEAL.] ALEX GILCHRIST, JR.
Clerk.

5 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The grand jurors for the United States of America, duly empaneled and sworn in the District Court of the United States for the Southern District of New York and inquiring for that district, upon their oath present:

1. That during all the times hereinafter mentioned the steamship "Dio" (hereinafter called S. S. "Dio") was a vessel belonging to the United States of America; the United States Shipping Board Emergency Fleet Corporation (hereinafter called the Fleet Corporation), a corporation in which the United States of America is and was a stockholder, had contracted for the operation and management of said vessel with the National Shipping Corporation, a corporation; the National Shipping Corporation was operating and managing said S. S. "Dio" on behalf of the Fleet Corporation under contract, whereby the expenses for fuel oil and for labor and material for repairs and replacements for and to said S. S. "Dio" were to be paid by said Fleet Corporation; E. Johnston & Company, Ltd., were the agents of the National Shipping Corporation at Rio de Janeiro, Brazil; the Standard Oil Company of Brazil was a dealer in fuel oil at Rio de Janeiro, Brazil; Rupert Wry was a citizen of the United States and master of said S. S. "Dio"; Raymond H. Bowman was a citizen of the United States and chief engineer of the S. S. "Dio"; H. B. Hankinson (his full first name being to the grand jurors unknown) was a citizen of the United States and a representative of the Standard Oil Company of Brazil at the port of Rio de Janeiro, Brazil; M. R. Millar was a subject of the

6 Kingdom of Great Britain and Ireland, and a merchant, ship repairer, and engineer of the city of Rio de Janiero, Brazil.

2. That heretofore, to wit, continuously and at all times from October 11, 1919, to and including January 1, 1920, upon the high

seas and out of the jurisdiction of any particular State and out of the jurisdiction of any district of the United States, but within the admiralty and maritime jurisdiction of the United States, and on board said S. S. "Dio," the aforesaid Rupert Wry, Raymond H. Bowman, H. B. Hankinson, and M. R. Millar, hereinafter referred to as the defendants, each well knowing all the matters and things herein alleged, did knowingly, willfully, and unlawfully enter into an agreement, combination, and conspiracy to defraud a corporation in which the United States of America is and was a stockholder, to wit, the said Fleet Corporation, by obtaining and aiding to obtain the payment and allowance of a false and fraudulent claim against said Fleet Corporation.

3. It was a part of the said conspiracy that the defendants Wry and Bowman should by wireless telegraph notify E. Johnston and Company, Ltd., that they would require at Rio de Janerio one thousand tons of fuel oil for the use of said S. S. "Dio"; it was further a part of said conspiracy that an order for account of said Fleet Corporation for one thousand tons of fuel oil should thereupon be given to the Standard Oil Company of Brazil, and that the defendant Hankinson should accept said order on behalf of the Standard Oil Company of Brazil, and should charge said vessel therefor, but should deliver on account of said order only six hundred tons of said fuel oil to said vessel; it was further a part of said conspiracy that the defendant should cause only six hundred tons of fuel oil to be placed on board said vessel, but should cause an invoice in the name of the Standard Oil Company of Brazil for one thousand tons of fuel oil, and a receipt signed by the defendants Wry and Bowman for one thousand tons of fuel oil, to be presented to E. Johnston & Company, Ltd., and should thereby falsely represent and pretend that one thousand tons of fuel oil had been delivered to said vessel, and that the defendants Wry and Bowman should approve the payment of such invoice by the said E. Johnston & Company, Ltd., and that the defendants should thereby procure the said E. Johnston & Company, Ltd., on behalf and for the account of said Fleet Corporation, to pay the amount of said invoice in the form of a check made payable to bearer on a local bank at Rio de Janeiro, Brazil, and that the defendant M. R. Millar should cause this check to be presented for payment at the bank upon which it was drawn, and should obtain payment upon the same in cash; and that said defendants should cause to be paid to the Standard Oil Company of Brazil an amount in cash equal to the price of six hundred tons of fuel oil, and should divide among themselves the amount in cash remaining from the proceeds of said check, to wit, the amount equal to the price for four hundred tons of fuel oil, and should fraudulently conver the said money to their own use; it was further a part of the said conspiracy that false reports to agents and representatives of the National Shipping Corporation should be made by the defendants Wry and Bowman, showing the receipt of one thousand tons of fuel at the port of Rio de Janeiro by the

poration should be made by the defendants Wry and Bowman, showing the receipt of one thousand tons of fuel oil at the Port of Rio de Janeiro by the S. S. "Dio," so as to conceal and cover up the facts that only six hundred tons of fuel oil had been delivered to said steamship; that four hundred additional tons had been paid for, and that the defendants had fraudulently converted the money so paid to their own use, so that in due course of the settlement of accounts the said Fleet Corporation should allow and pay a false and fraudulent claim for four hundred tons of fuel oil.

Over acts.

4. That in furtherance of said agreement, combination, and conspiracy, and to effect the object thereof, on board said S. S. "Dio" upon the high seas and out of the jurisdiction of any particular State and out of the jurisdiction of any district of the United States, but within the admiralty and maritime jurisdiction of the United States, the following overt acts were committed, to wit:

12 (1) On October 29, 1919, the defendants Wry and Bowman did discuss orally with each other the matter of concealing the short delivery of four hundred tons of fuel oil to said S. S. "Dio";

(2) On October 30, 1919, the defendant Wry did send a wireless message of the tenor following to said E. Johnston & Company, Ltd.:

"Received your message Oct. 29th after wiring you. Will arrive 7 a. m. Oct. 31st. Require about 1,000 tons of fuel oil";

(3) On October 31, 1919, the defendants Millar and Hankinson did go on board said S. S. "Dio" and there converse with the defendants Wry and Bowman;

(4) On December 1, 1919, the defendant Wry did send a wireless message to the defendant Millar at Rio de Janeiro, Brazil;

(5) On November 14, 1919, the defendants Wry and Bowman did cause false reports to be made showing receipt by the S. S. "Dio" of 1,000 tons of fuel oil;

5. In furtherance of said agreement, combination, and conspiracy, and to effect the object thereof, out of the jurisdiction of any particular State and out of the jurisdiction of any district of the United States, at the city of Rio de Janeiro, Brazil, the following overt acts were committed, to wit:

(1) On November 6, 1919, the defendant Hankinson made out in the name of the Standard Oil Company of Brazil an invoice for 1,000 tons of fuel oil for the S. S. "Dio," the defendant Wry signed said invoice, and the defendants Wry and Bowman signed a receipt for 1,000 tons of fuel oil;

(2) On November 7, 1919, the defendant Hankinson received from E. Johnston & Company, Ltd., a check in payment of said invoice, the defendant Millar caused said check to be cashed, and all the defendants participated in dividing the proceeds of said check;

13 Against the peace of the United States and their dignity

and contrary to the form of the statute of the United States in such case made and provided. (§ 35, U. S. C. C.)

That the Southern District of New York is the district in which defendants Wry and Bowman and Hankinson were found, and into which they were first brought after the commission of the offense herein charged, but that the defendant M. R. Millar has not been brought into or found within the Southern District of New York since the commission of the offense herein charged. (§ 41, U. S. J. C.)

Third count.

1. And the grand jurors aforesaid, on their oath aforesaid, do further present, incorporating and realleging in this count as if herein again set forth in full, all the matters and things contained in paragraph numbered "1" of the first count of this indictment;

2. That heretofore, to wit, continuously and at all times from October 11, 1919, to and including January 1, 1920, out of the jurisdiction of any particular State and out of the territorial jurisdiction of any district of the United States, at the city of Rio de Janeiro, Brazil, the aforesaid Rupert Wry, Raymond H. Bowman, H. B. Hankinson, and M. R. Millar, hereinafter referred to as the defendants, each well knowing all the matters and things herein alleged, did knowingly, wilfully, and unlawfully enter into an agreement, combination, and conspiracy to defraud a corporation in which the United States of America is and was a stockholder, to wit, the said Fleet Corporation, by obtaining and aiding to obtain the payment and allowance of a false and fraudulent claim against said Fleet Corporation;

14 3. It was a part of the conspiracy that the defendants Wry and Bowman should by wireless telegraph notify E. Johnston & Company, Ltd., that they would require at Rio de Janeiro one thousand tons of fuel oil for the use of said S. S. "Dio"; it was further a part of said conspiracy that an order for account of said Fleet Corporation for one thousand tons of fuel oil should thereupon be given to the Standard Oil Company of Brazil, and that the defendant Hankinson should accept said order on behalf of the Standard Oil Company of Brazil, and should charge said vessel therefor, but should deliver on account of said order only six hundred tons of said fuel oil to said vessel; it was further a part of said conspiracy that the defendants should cause only six hundred tons of fuel oil to be placed on board said vessel, but should cause an invoice in the name of the Standard Oil Company of Brazil for one thousand tons of fuel oil, and a receipt signed by the defendants Wry and Bowman for one thousand tons of fuel oil, to be presented to E. Johnston & Company, Ltd., and should thereby falsely represent and pretend that one thousand tons of fuel oil had been delivered to said vessel, and that the defendants Wry and Bowman should approve the payment of such invoice by the said E. Johnston & Company, Ltd., and that the defendants should thereby procure the

said E. Johnston & Company, Ltd., on behalf and for the account of said Fleet Corporation, to pay the amount of said invoice in the form of a check made payable to bearer on a local bank at Rio de Janeiro, Brazil, and that the defendant M. R. Millar should cause this check to be presented for payment at the bank upon which it was drawn, and should obtain payment upon the same in cash,
15 and that said defendants should cause to be paid to the Standard Oil Company of Brazil an amount in cash equal to the price of six hundred tons of fuel oil, and should divide among themselves the amount in cash remaining from the proceeds of said check, to wit, the amount equal to the price for four hundred tons of fuel oil, and should fraudulently convert the said money to their own use; it was further a part of the said conspiracy that false reports to agents and representatives of the National Shipping Corporation should be made by the defendants Wry and Bowman, showing the receipt of one thousand tons of fuel oil at the port of Rio de Janeiro by the S. S. "Dio," so as to conceal and cover up the facts that only six hundred tons of fuel oil had been delivered to said steamship; that four hundred additional tons had been paid for, and that the defendants had fraudulently converted the money so paid to their own use, so that in due course of the settlement of accounts the said Fleet Corporation should allow and pay a false and fraudulent claim for four hundred tons of fuel oil.

Overt acts.

4. In furtherance of said agreement, combination, and conspiracy, and to effect the object thereof, out of the jurisdiction of any particular State and out of the territorial jurisdiction of any district of the United States at the city of Rio de Janeiro, Brazil, the following overt acts were committed, to wit:

(1) On November 6, 1919, the defendant Hankinson made out in the name of the Standard Oil Company of Brazil an invoice for 1,000 tons of fuel oil for the S. S. "Dio," the defendant Wry signed said invoice, and the defendants Wry and Bowman signed a receipt for 1,000 tons of fuel oil;

16 (2) On November 7, 1919, the defendant Hankinson received from E. Johnston & Company, Ltd., a check in payment of said invoice, the defendant Millar caused said check to be cashed, and all the defendants participated in dividing the proceeds of said check;

Against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Section 35, U. S. C. C.)

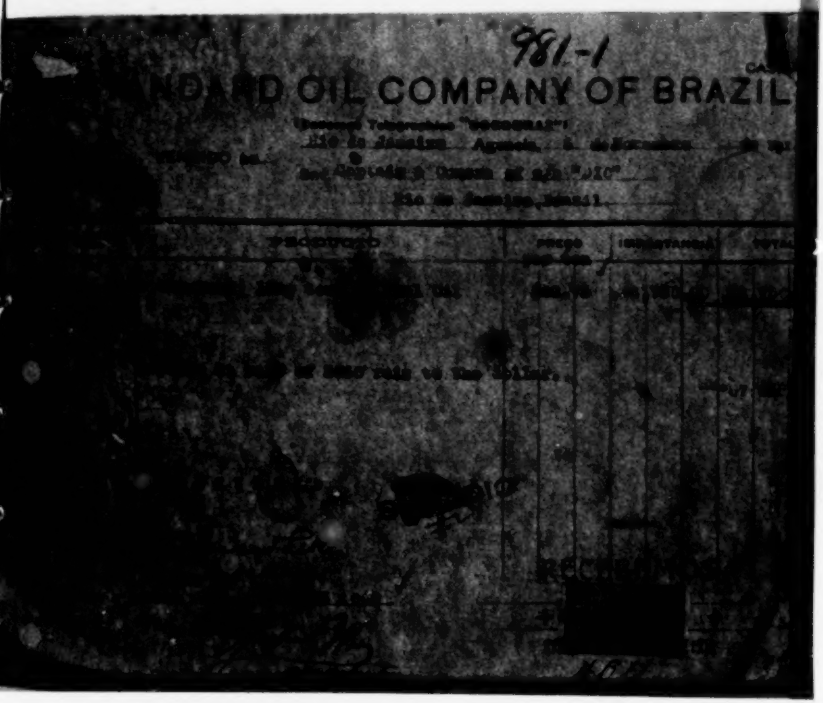
That the Southern District of New York is the district in which defendants Wry and Bowman and Hankinson were found, and into which they were first brought after the commission of the offense herein charged, but that the defendant M. R. Millar has not been brought into or found within the Southern District of New York

since the commission of the offense herein charged. (Section 41, U. S. J. C.)

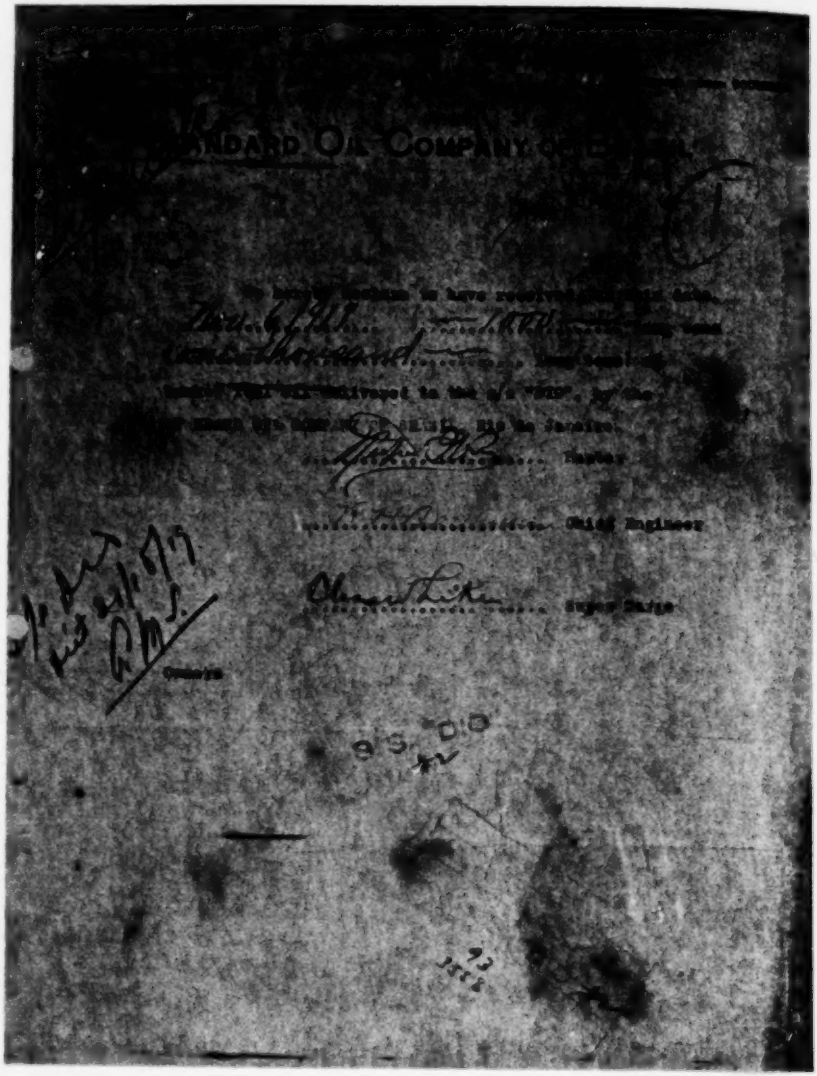
Fourth count.

And the grand jurors aforesaid, on their oath aforesaid, do further present, reincorporating and realleging in this count as if herein again set forth in full all the matters and things contained in paragraph numbered "1" of the first count of this indictment:

That theretofore, to wit, on November 6, 1919, out of the jurisdiction of any particular State and out of the jurisdiction of any district of the United States, but within the admiralty and maritime jurisdiction of the United States, on board said S. S. "Dio," at the port of Rio de Janeiro, Brazil, the aforesaid Reupert Wry, Raymond H. Bowman, and H. B. Hankinson, and M. R. Millar, hereinafter referred to as the defendants, each well
17 knowing all the matters and things herein alleged, did knowingly, wilfully, and unlawfully, in the name of the Standard Oil Company of Brazil, make and cause to be made, for payment and approval, a claim against the said Fleet Corporation, a corporation in which the United States of America is and then was a stockholder, knowing such claim to be false, fictitious, and fraudulent, in that they did make and cause to be made an invoice of the tenor following, to wit:



and a receipt of the tenor following to wit:



18 which said invoice and receipt were false, fictitious, and fraudulent in that only six hundred tons of fuel oil were delivered by the Standard Oil Company of Brazil to said vessel, and which said invoice and receipt were a claim against said E. Johnston & Company, Ltd., agents for the National Shipping Corporation, for

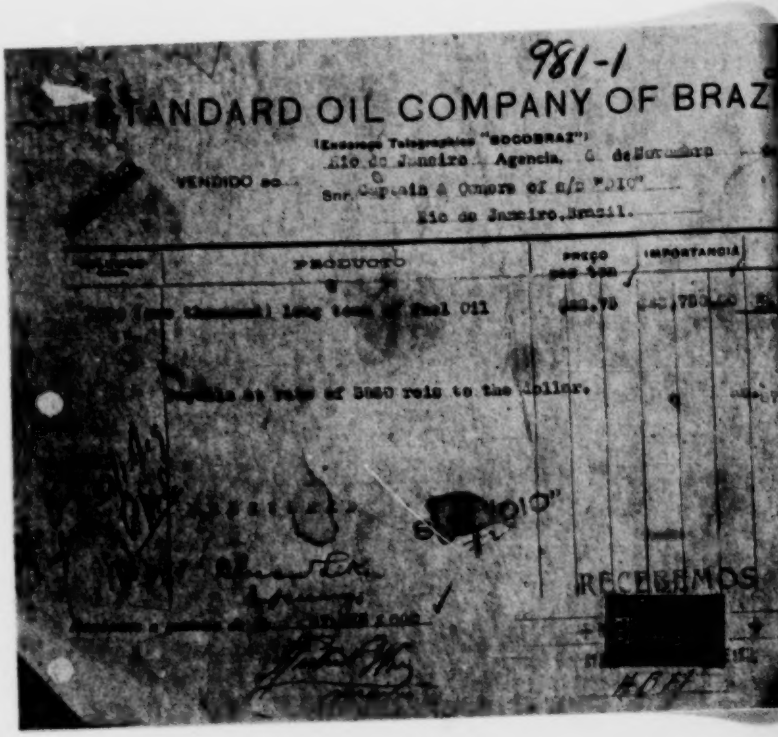
payment and approval on behalf of and for the account of the Fleet Corporation and so were a claim against said Fleet Corporation; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (§35, U. S. C. C.)

That the Southern District of New York is the district in which defendants Wry and Bowman and Hankinson were found, and into which they were first brought after the commission of the offense herein charged, but that the defendant M. R. Millar has not been brought into or found within the Southern District of New York since the commission of the offense herein charged. (§41, U. S. J. C.)

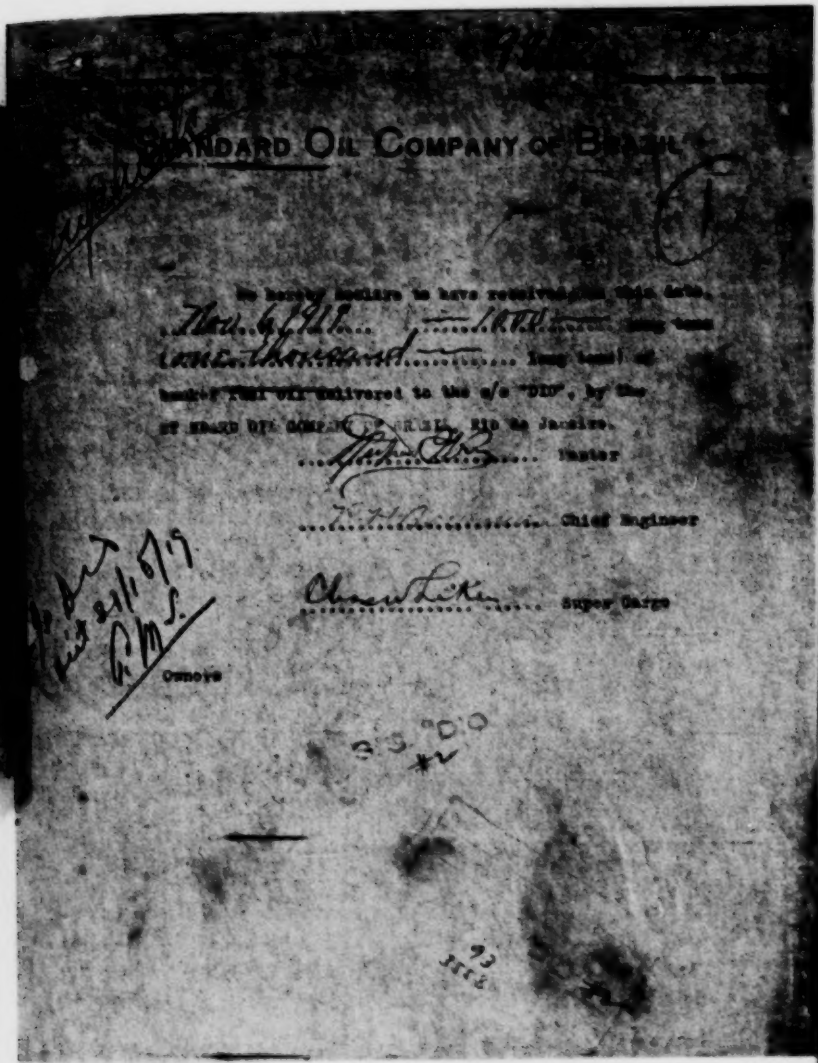
Fifth count.

And the grand jurors aforesaid, on their oath aforesaid, do further present, reincorporating and realleging in this count as if herein again set forth in full all the matters and things contained in paragraph numbered "1" of the first count of this indictment:

That heretofore, to wit, on November 6, 1919, out of the jurisdiction of any particular State and out of the territorial jurisdiction of any district of the United States, at the city of Rio de
19 Janeiro, Brazil, the aforesaid Rupert Wry, Raymond H. Bowman, H. B. Hankinson, and M. R. Millar, hereinafter referred to as the defendants, each well knowing all the matters and things herein alleged, did knowingly, wilfully, and unlawfully, in the name of the Standard Oil Company of Brazil, present and cause to be presented to said Fleet Corporation, for payment and approval, a claim against the said Fleet Corporation, a corporation in which the United States of America is and was a stockholder, knowing such claim to be false, fictitious, and fraudulent, in that they did make and cause to be made an invoice of the tenor following, to wit:


981-1
STANDARD OIL COMPANY OF BRAZ
(Endereço Telegraphico "SOCOBRAZ")
Rio de Janeiro Agencia, 6 de
VENDIDO ao
Snr. Capitain & Owners of s/s "
Rio de Janeiro, Brazil.
PRODUCTO
PREÇO por ton
IMPORTANCIA
Long tons of Fuel Oil
at rate of 3960 reis to the dollar.
RECEBEMOS

and a receipt of the tenor following, to wit:


STANDARD OIL COMPANY OF BRAZIL

Master

Chief Engineer

Super Cargo

Canoya

20 which said invoice and receipt were false, fictitious, and fraudulent, in that only six hundred tons of fuel oil was delivered by the Standard Oil Company of Brazil to said vessel, and which said invoice and receipt were presented by the said defendants to E. Johnston & Company, Ltd., agents for the National Shipping Cor-

poration, for payment and approval on behalf of and for the account of the Fleet Corporation, and so were then and there presented to said Fleet Corporation; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Sec. 35, U. S. C. C.)

That the Southern District of New York is the district in which defendants Wry and Bowman and Hankinson were found, and into which they were first brought after the commission of the offense herein charged, but that the defendant M. R. Millar has not been brought into or found within the Southern District of New York since the commission of the offense herein charged. (Sec. 41, U. S. J. C.)

Sixth count.

And the grand jurors aforesaid, on their oath aforesaid, do further present, reincorporating and realleging in this count as if herein again set forth in full all the matters and things contained in paragraph numbered "1" of the first count of this indictment:

That heretofore, to wit, on November 6, 1919, out of the jurisdiction of any particular State and out of the territorial jurisdiction of any district of the United States, at the port and at the city of Rio de Janerio, Brazil, the aforesaid Rupert Wry, Raymond H. Bowman, H. B. Hankinson, and M. R. Millar, hereinafter
21 referred to as the defendants, each well knowing all the matters and things herein alleged, did knowingly, wilfully, and unlawfully, for the purpose of obtaining and aiding to obtain the payment and approval of a claim against the Fleet Corporation for supplying to the S. S. "Dio" one thousand tons of fuel oil and for the purpose of cheating and swindling and defrauding the Fleet Corporation, a corporation in which the United States of America is and then was a stockholder, falsify, conceal, and cover up by trick, scheme, and device a material fact, in that the said defendants did make and cause to be made an invoice in the name of the Standard Oil Company of Brazil for one thousand tons of fuel oil, and the defendants Rupert Wry and Raymond H. Bowman did make and cause to be made a receipt showing the delivery of one thousand tons of fuel oil —— the S. S. "Dio," by the Standard Oil Company of Brazil, whereas in truth and in fact, as each of the defendants well knew, only six hundred tons of fuel oil were delivered by said Standard Oil Company of Brazil to the S. S. "Dio," and the said defendants did procure the payment on behalf of said Fleet Corporation by E. Johnston & Co., Ltd., of said invoice for one thousand tons of fuel oil, and did pay over to the Standard Oil Company of Brazil an amount of money equal to the value of said six hundred tons of fuel oil actually delivered to the S. S. "Dio," and did divide among themselves and fraudulently convert to their own use the remaining money, to wit, an amount equal to the value of four hundred tons of fuel oil, and so, for the purposes aforesaid,

did conceal and cover up the fact that only six hundred tons of fuel oil were delivered to the S. S. "Dio"; against the peace of the United States and their dignity and contrary to the form
22 of the statute of the United States in such case made and provided. (§35, U. S. C. C.)

That the Southern District of New York is the district in which defendants Wry and Bowman and Hankinson were found, and into which they were first brought after the commission of the offense herein charged, but that the defendant M. R. Millar has not been brought into or found within the Southern District of New York since the commission of the offense herein charged. (§41, U. S. J. C.)

FRANCIS G. CAFFEY,
United States Attorney.

A true bill: Richard B. Sperry, foreman.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Oct. 5, 1920.

23 UNITED STATES DISTRICT COURT,
Southern District of New York.

THE UNITED STATES OF AMERICA
against
RUPERT WRY, RAYMOND H. BOWMAN, H. B. HANKINSON, and M. R. Millar.

Defendant Raymond H. Bowman demurs to the indictment herein and to each and every count of said indictment, and for his ground of demurrer he says that it appears on the face thereof that the court has no jurisdiction of the subject of the action:

First. That it is not alleged, nor does it appear in the said indictment nor in any count thereof, that any act or crime alleged in said indictment nor in any count thereof was committed within the jurisdiction of the United States nor within the jurisdiction of any particular State thereof.

Second. That it does appear by the said indictment and by each and every count thereof that the acts and crimes alleged in said indictment and in each and every count thereof were committed without the jurisdiction of the United States and every State thereof; that is to say, that the said acts and alleged crimes set forth in the said indictment and each and every count thereof were committed within the jurisdiction of the Republic of Brazil.

GEORGE A. HOPKINS,
Attorney for Bowman,
#233 Broadway, Manhattan, New York City.

24 CITY OF NEW YORK,
County of New York, State of New York, ss:

Raymond H. Bowman, being duly sworn, deposes and says that he is one of the defendants herein; that he has read the foregoing

demurrer and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

RAYMOND H. BOWMAN.

Sworn to before me this 26th day of October, 1920.

RUTH KAMINSKY,
Notary Public, etc.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed October 27, 1920.

25 UNITED STATES DISTRICT COURT,

Southern District of New York.

UNITED STATES OF AMERICA, PLAINTIFF,
against
RAYMOND H. BOWMAN ET AL., DEFENDANTS.

George A. Hopkins, of New York City, for defendants.

Francis G. Caffey, United States attorney (Ben A. Matthews and Henry E. Kelley, assistant U. S. attorneys), opposed.

MAYER, *District Judge:*

This demurrer brings up the question whether this court has jurisdiction of the offenses denounced by section 35 of the United States Criminal Code if committed by a citizen of this country on board an American vessel upon the high seas.

During the period covered by the indictment, between October, 1919, and January, 1920, the steamship "Dio" belonged to the Government. The United States owned and owns all the stock in the United States Shipping Board Emergency Fleet Corporation.

26 The National Shipping Corporation agreed to operate and manage the "Dio" on behalf of the Fleet Corporation. Under the contract the expenses for fuel, oil, labor, and materials were to be paid by the Fleet Corporation.

There are four defendants. One defendant was master of the ship. Demurrant, a citizen of the United States, was the chief engineer. Another defendant was the representative at Rio de Janeiro, Brazil, of the Standard Oil Company of Brazil, a dealer in fuel oil there. Another defendant was a merchant ship repairer and engineer at Rio de Janeiro. Johnston & Company, not a party hereto, was the agent of the Shipping Corporation at Rio de Janeiro.

The indictment is in six counts. All of them are laid under section 35 of the Criminal Code. (Note.)[1]

[1](Note.) Section 35 of the Criminal Code, as amended Oct. 23, 1918 (40 Stat., 1015), is as follows:

Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service

28 Each charges an offense under that section committed outside of the territory of the Southern District of New York. In the way hereinafter stated, in general, it may be said that it is alleged that the conduct complained of occurred either on the high seas or in the harbor of Rio de Janiero or at Rio de Janiero.

In each count it is alleged, in accordance with section 41 of the Judicial Code, that the Southern District of New York is the district in which three defendants, including Bowman, were found and into which they were first brought after the commission of the offense; also that the fourth defendant has not been brought into or found within this district.

Bowman by demurrer to the indictment as a whole and to each count has challenged this court's jurisdiction.

The indictment.

The substance of the offense charged in the first, second, and third counts is a conspiracy to defraud the Fleet Corporation by obtaining

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of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or
27 representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry; or whoever shall take and carry away or take for his own use, or for the use of another, with intent to steal or purloin, any personal property of the United States, or any branch or department thereof, or any corporation in which the United States of America is a stockholder; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; and whoever, having charge, possession, custody, possession, custody, or control of any money or other public property used or to be used in the military or naval service, with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, or willfully to conceal such money or other property, shall deliver or cause to be delivered to any person having authority to receive the same any amount of such money or other property less than that for which he received a certificate or took a receipt; or whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, shall make or deliver the same to any other person without a full knowledge of the truth of the facts stated therein and with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall be fined not more than $10,000 or imprisoned not more than ten years, or both. And whoever shall purchase, or receive in pledge, from any person any arms, equipment, ammunition, clothing, military stores, or other property furnished by the United States, under a clothing allowance or otherwise, to any soldier, sailor, officer, cadet, or midshipman in the military or naval service of the United States or of the National Guard or Naval Militia, or to any person accompanying, serving, or retained with the land or naval forces and subject to military or naval law, having knowledge or reason to believe that the property has been taken from the possession of the United States or furnished by the United States under such allowance, shall be fined not more than $500 or imprisoned not more than two years, or both.

and aiding to obtain payment or allowance of a false and fraudulent claim against that corporation.

The crime alleged is illustrated by the first count. The essence of the scheme was this: The master and Bowman, the chief engineer of the "Dio," would send a wireless message to Johnston & Company, the agent at Rio de Janiero of the Shipping Corporation, which operated the vessel, that upon its arrival at that port 1,000 tons of fuel oil would be needed for their ship. An order for that quantity would be given to the oil company, the dealer in that city. One of the defendants, the representative of the oil company, would accept the order and charge the vessel for the full amount, but deliver only 600 tons. The invoice would be made out in the name of the dealer for 1,000 tons. The master and Bowman would receipt for 1,000 tons and approve payment of the invoice. In this way Johnston & Company, for account of the Fleet Corporations, would be led to give their check on a local bank at Rio de Janiero, payable to bearer, in an amount sufficient to cover the invoice. The merchant ship repairer at Rio (and the defendant) would get the check cashed. The oil company would then be paid for the 600 tons actually sold and delivered. The balance, equivalent to the price of 400 tons, would be divided among the defendants. In due coarse false reports of the transaction would be made, and the Fleet Corporation, in reliance upon these, would pay the whole claim, fraudulent to the extent of the sum converted by the defendants to their own use.

The fourth count describes the offense as making and causing to be made for payment and approval a knowlingly false, fictitious, and fraudulent claim against the Fleet Corporation. The fifth charges the presentation of the same calm and the causing it to be presented to the Fleet Corporation. The sixth charges that the defendants knowingly and wilfully falsified, concealed, and covered up by trick, scheme, and device a material fact in the presentation of this claim to the Fleet Corporation for the purpose and with the intent of cheating, swindling, and defrauding the Government and to obtain and aid in obtaining payment thereof.

The *locus* at which took place the acts relied upon as constituting crimes is variously described in the several counts.

In the first court it is alleged that the conspiracy occurred on the high seas on board the "Dio," and out of the jurisdiction of any particular State or of any district of the United States, but within the admiralty and maritime jurisdiction of the United States.

The second alleges that the same conspiracy occurred upon the high seas and elsewhere out of the jurisdiction of any particular State or of any district of the United States, but within the admiralty and marine jurisdiction of the United States, to wit, on board the "Dio" on the high seas and at the port of Rio de Janiero, as well as in that city.

The third alleges that the offense took place at the city of Rio de Janiero, out of the jurisdiction of any particular State or the territorial jurisdiction of any district of the United States.

31 The fourth alleges that the offense of making the false claim occurred on board the "Dio" at the port of Rio de Janiero, out of the jurisdiction of any particular State or of any district of the United States but within the admiralty and maritime jurisdiction of the United States.

The fifth alleges that presentation of the false claim was at the city of Rio de Janiero, out of the jurisdiction of any particular State of the United States and out of the territorial jurisdiction of any district of the United States.

The sixth alleges that the misconduct was at the port and at the city of Rio de Janiero, out of the jurisdiction of any particular State and out of the territorial jurisdiction of any district of the United States.

The demurrer.

The substance of the grounds of the demurrer to the indictment and every count is that—

(1) It is not alleged that the offense was committed within the jurisdiction of the United States or of any particular State thereof.

(2) It appears that the misconduct complained of was committed without the jurisdiction of the United States or of any State thereof, and within the jurisdiction of the Republic of Brazil.

The issue.

32 It is not claimed by the demurrer that the substantive matter incorporated in any of the counts is insufficient to state a complete offense under section 35 of the Criminal Code. An examination of the indictment will disclose that each count avers every element required by the statute to constitute a violation.

No objection is made to the venue. If any Federal court has jurisdiction to proceed, the Southern District of New York is the correct forum. The demurrant was found in and first brought into this district upon the return of the "Dio" from the voyage during which the occurrences complained of transpired. There are appropriate allegations to this effect in each count, in conformity with section 41 of the Judicial Code.

The sole basis of demurrant's contention is that the *locus in quo* affirmatively shown negatives this court's jurisdiction.

The first count relates only to the high seas on board the "Dio"; the second to the same and at the port of Rio de Janiero. The fourth covers what occurred on board the ship while in port at Rio de Janiero. The third and fifth deal only with transactions at the city of Rio de Janiero, wholly within the Republic of Brazil; the sixth with transactions at the port and city of Rio de Janiero.

One of the accepted functions of a sovereign is to regulate the ships under its flag on the high seas and the conduct of its
33 citizens while on those ships. That authority has been exercised, and repeatedly sustained by the courts.

Crapo v. *Kelly*, 16 Wall. 610, 623–632.
U. S. v. *Rodgers*, 150 U. S. 247, 260–1, 264–5.
The Hamilton, 207 U. S. 398, 403, 405.
American Banana Co. v. *United Fruit Co.*, 213 U. S. 347.
Wilson v. *McNamee*, 102 U. S. 572, 574.
U. S. v. *Smiley*, 6 Sawyer 640, 645; 27 Fed. Cases, No. 16, 317, pp. 1132, 1134.

That Congress has power to enact legislation such as that embodied in section 35 of the Criminal Code, applicable upon the high seas, if it so determines, is plain. It may be based on any one of several express provisions of the Constitution. Among these are three embraced in Article I, section 8, to wit: (1) Clause 3, relating to the regulation of foreign commerce; (2) clause 10, authorizing the definition of felonies on the high seas; (3) clause 18, sanctioning the passage of all laws required for the effective exercise of the powers of the Government, and hence all such as the Congress may deem essential for the protection of the Government or of its agencies or property.

Ordinarily, however, and *prima facie*, the criminal laws of the United States are effective only within the territory of the United States. For that purpose, however, the high seas, outside a marine league from the shores and outside the jurisdiction of any particular State, are constructively a part of such territory. Indeed, the high seas are a part peculiarly within the jurisdiction of the
34 United States in the application of its criminal laws, as distinguished from the States and their laws.

U. S. v. *Smiley*, *supra*.
St. Clair v. *U. S.*, 154 U. S. 134, 152.
In re Moncan, 14 Fe. 44, 48.
U. S. v. *Rodgers*, *supra*.

When, however, the Congress has intended that its laws shall be operative on the high seas, it has so stated.

Chapters eleven and twelve of the United States Criminal Code refer to the high seas. Chapter four, in which section 35 here under consideration is included, does not.

Jurisdiction of criminal offenses must be conferred upon the United States courts. It is never inferred. The question, thus, is not one of power, but one of statutory construction. Section 35 was amended in certain respects on October 23, 1918, but prior thereto it had been long in existence. Yet, never so far as appears, has there heretofore been any case in which this section has been invoked to punish the offences denounced if committed on the high seas or in a foreign country. In the absence, therefore, of language extending the *locus* of the crime to the high seas or beyond the territory of the

United States, the court and not the Congress would be writing the statute, if it gave to it the construction urged by the Government.

35 My attention has been called to the opinion of the Acting Attorney General dated November 1, 1920, in respect of the eighteenth amendment. The opinion states that "The eighteenth amendment by its terms applies to the United States and 'all territory subject to the jurisdiction thereof.'" In the case at bar section 35 does not contain the language "all territory subject to the jurisdiction." Whether the opinion of the Acting Attorney General is correct or not, it is apparent that he was construing a statute enacted under a constitutional provision containing language not found in section 35 and, therefore, not the subject matter of construction in this case.

Demurrer sustained.

JULIUS M. MAYER,
District Judge.

FEBRUARY 15, 1921.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Feb. 16, 1921.

36 *Order sustaining demurrer of deft. Raymond H. Bowman, &c.*

At a stated term of the United States District Court held in and for the Southern District of New York at the United States courthouse and post-office building, Borough of Manhattan, City of New York, on the 25th day of March, 1921.

Present: Honorable Julius M. Mayer, United States district judge.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
RUPERT WRY, RAYMOND H. BOWMAN, H. B. HANKINSON, and M. R. MILLAR, defendants.

The indictment herein having been filed on the 5th day of October 1920, and the demurrer of the defendant Raymond H. Bowman, in which it was alleged that the court had no jurisdiction over any of the acts alleged in the said indictment having been filed on the 27th day of October, 1920, and the issues of law raised by the said demurrer having come on to be heard by this court at a stated term thereof, and after hearing George A. Hopkins, Esq., in support of the said demurrer and Francis G. Caffey, Esq., United States attorney, Ben A. Matthews and Henry E. Kelley, assistant United States attorneys, in opposition thereto, and due deliberation having been had thereon and the court on February 16, 1920, having handed down its written opinion, holding that the court was without authority to exercise jurisdiction over the acts alleged in the indictment: Now, therefore, it is

Ordered that the demurrer of the defendant Raymond H. Bowman to the indictment herein and to each and every count thereof be and the same is hereby sustained and it is

37 Further ordered that the defendant Raymond H. Bowman be, and he is hereby is, discharged from custody.

J. M. MAYER,
United States District Judge.

Service of copy acknowledged.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Mar. 25, 1921.

38 *Docket entries.*

UNITED STATES DISTRICT COURT,
Southern District of New York.

THE UNITED STATES
vs.
RUPERT WRY, RAYMOND H. BOWMAN, H. B. HANKINSON, M. R. Millar. } C 24-467.

For defendant: Geo. A. Hopkins (for Bowman) Woolworth Bldg. False & fraudulent claim against U. S. Vio. sec. 35, U. S. C. C.

1920.

Oct. 5. Filed indictment.
7. Deft. Bowman pleads not guilty. Bail, $1,000.
7. " Hankinson pleads not guilty. Bail, $500.
7. Filed recognizance Bowman—Albert Shestack, surety.
7. " " Hankinson—Nat. Surety Co., surety.
20. Deft. Hankinson pleads guilty.
20. " sentenced to one day in custody of U. S. marshal.
20. Issued commitment and duplicate.
20. Filed commitment and entered return. Defendant delivered to U. S. marshal.
27. Filed demurrer of Bowman.

Dec. 15. Recognizance of Wry ordered forfeited. Augustus N. Hand, J.

1921.

Jan. 4. Filed order that clerk pay $1,000 bail of Wry into U. S. Treasury.

Feb. 16. Filed opinion, Mayer, J. "Demurrer sustained" as to Bowman.

Mar. 25. Filed order sustaining demurrer as to Bowman.
30. " petition for writ of error & assignment of errors.
31. " citation and writ of error returnable U. S. Supreme Court April 28, 1921.

39 UNITED STATES DISTRICT COURT,
Southern District of New York.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
RUPERT WRY, RAYMOND H. BOWMAN, H. B. HANKINS, and M. R. MILLAR, defendants.

Assignments of error.

The United States of America in connection with its petition for a writ of error make the following assignments of error which they allege occurred in the decision of the court in sustaining the demurrer of the defendant Raymond H. Bowman to the indictment herein, to wit:

1. The court erred in sustaining the demurrer to the indictment herein.

2. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the court was without jurisdiction over the subject matter of the first count of the indictment.

3. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the court was without jurisdiction over the subject matter of the second count of the indictment.

4. The court erred in holding as it did in sustaining the demurred to the indictment herein that the court was without jurisdiction over the subject matter of the third count of the indictment.

5. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the court was without jurisdiction over the subject matter of the fourth count of the indictment.

40 6. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the court was without jurisdiction over the subject matter of the fifth count of the indictment.

7. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the court was without jurisdiction over the subject matter of the sixth count of the indictment.

8. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the acts alleged in the first count of the indictment did not constitute a crime punishable under any law of the United States.

9. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the acts alleged in the second count of the indictment did not constitute a crime punishable under any law of the United States.

10. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the acts alleged in the third count of the indictment did not constitute a crime punishable under any law of the United States.

11. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the acts alleged in the fourth

count of the indictment did not constitute a crime punishable under any law of the United States.

12. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the acts alleged in the fifth count of the indictment did not constitute a crime punishable under any law of the United States.

41 13. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the acts alleged in the sixth count of the indictment did not constitute a crime punishable under any law of the United States.

14. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the court was without jurisdiction over the offense alleged in the first count of the indictment when committed on board a vessel of the United States on the high seas and without the jurisdiction of any particular State of the United States.

15. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the court was without jurisdiction over the offense alleged in the second count of the indictment when committed partly on board a vessel of the United States on the high seas and without the jurisdiction of any particular State of the United States and partly in a foreign country.

16. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the court was without jurisdiction over the offense alleged in the third count of the indictment when committed wholly within a foreign country.

17. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the court was without jurisdiction over the offense alleged in the fourth count of the indictment when committed on board a vessel of the United States while the same was without the jurisdiction of any particular State of the United States but in waters within the admiralty and maritime juris-

42 diction of the United States.

18. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the court was without jurisdiction over the offense alleged in the fifth count of the indictment when committed wholly within a foreign country.

19. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the court was without jurisdiction over the offense alleged in the sixth count of the indictment when committed wholly within a foreign country.

The United States of America aforesaid, plaintiff in error, prays that the decision aforesaid and the order entered thereon for the errors aforesaid in the record and proceeding herein may be reversed and altogether held for nothing and that the plaintiff in error may be restored to all things which it has lost by reason of said decision and order and judgment and that the District Court of the United States be directed to vacate and set aside said order and judgment

and to compel the defendant in error to plead to the indictment herein and for such other and further relief as to the court may seem proper.

Dated New York, March 30, 1921.

FRANCIS G. CAFFEY,
United States Attorney, Southern District of New York.

Service of copy acknowledged.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Mar. 30, 1921.

43 UNITED STATES DISTRICT COURT,
Southern District of New York.

UNITED STATES OF AMERICA, PLAINTIFF,
against
RUPERT WRY, RAYMOND H. BOWMAN, H. B. Hankinson, & M. R. Millar. } Petition for writ of error.

Now comes United States of America by its attorney, Francis G. Caffey, United States attorney for the Southern District of New York, and complains that in the record and proceeding had in this cause, sustaining the demurrer of the defendant Raymond H. Bowman to the indictment herein, a manifest error hath happened, as well appears from the assignments of error herewith submitted. The United States of America prays for the allowance of a writ of error and for such other orders and process and may cause the same to be correct by the Supreme Court of the United States.

Dated New York, N. Y., March 30th, 1921.

FRANCIS G. CAFFEY,
United States Attorney for the Southern District of New York, Attorney for Petitioner.

Receipt of copy acknowledged.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Mar. 30, 1921.

44 *By the honorable Julius M. Mayer, one of the judges of the District Court of the United States for the Southern District of New York, to Raymond H. Bowman, defendant in error, greeting:*

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at the Capitol, in the city of Washington, in the District of Columbia, on the 28th day of April, 1921, pursuant to a writ of error filed in the office of the clerk of the District Court of the United States for the Southern District of New York, wherein the United States of America is plaintiff in error and you are the defendant in error, to show cause, if any there be, why judgment in said writ mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand, at the borough of Manhattan, in the city of New York, Southern District of New York, this 30th day of

March, in the year of our Lord one thousand nine hundred and twenty-one, and of the independence of the United States the one hundred and forty-fifth.

J. M. MAYER,
Judge of the District Court of the United States
for the Southern District of New York.

45 (Endorsed:) Court docket No. C–24–467. Form No. 336. U. S. District Court, Southern District of New York. The United States of America versus Rupert Wry, Raymond H. Bowman, H. B. Hankinson & M. R. Millar. Citation. Francis G. Caffey, United States attorney. Due service of a copy of the within is hereby admitted. April 1st, 1921. Copy recd. April 2/21. George A. Hopkins, aty. for deft. Bowman. Filed Mar. 31, 1921. U. S. District Court, S. D. of N. Y.

(Endorsement on cover:) File No. 28241. S. New York, D. C. U. S. Term No. 884. The United States of America, plaintiff in error, vs. Raymond H. Bowman. Filed April 19th, 1921. File No. 28,241.